FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 10, 2005

Pantelis Michalopoulos, Esq.
Philip L. Malet, Esq.
Steptoe & Johnson LLP
1330 Connecticut Ave., N.W.
Washington, DC 20036-1795

RE: EchoStar Satellite L.L.C.
Petition for Waiver of Application Fees
Fee Control Number 00000RROG-04-094

Dear Counsel:

This is in response to your petition for waiver of application fees dated September 1, 2004 that you submitted on behalf of EchoStar Satellite L.L.C. (EchoStar) in connection with an application to operate receive-only earth stations in the United States to provide Direct-to-Home Fixed-Satellite Service (DTH-FSS) programming from a Canadian-licensed satellite.[1] You request that the Commission find that no fee is required for the one million receive-only earth station antennas, i.e., waive these fees, or "find that the VSAT [i.e., Very Small Aperture Terminal] application fee [i.e., $8,260.00] is appropriate." Our records reflect that EchoStar paid a $8,260.00 filing fee with its receive-only earth station license application.

You recite that EchoStar requests authorization for one million technically identical receive-only earth station antennas "to expand its provision of MVPD [multichannel video programming distribution] services to consumers in the United States." You state that under the Commission's rules, the application could be subject either to the $8,260.00 fee for an initial application for a fixed satellite VSAT system under section 1.1107(6)(a) of the Commission's rules, 47 C.F.R. 1.1107(6)(a), or the $340.00 fee for an initial application for a receive-only earth station under section 1.1107(5)(a), 47 C.F.R. 1.1107(5)(a), for each of the one million earth stations, for a total fee of $340,000,000. Citing *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC Rcd 21581, 21592 (1996), you assert that EchoStar's proposed system is consistent with the Commission's definition of "VSAT networks

[1] *See Public Notice, Satellite Communications Services, Re: Satellite Radio Applications Accepted for Filing,* Report No. SES-00656 (Nov. 3, 2004) (EchoStar's application for authority to operate one million receive-only U.S. earth stations using Ku-band capacity (i.e., 14.0 – 14.5 GHz and 11.7-12.2 GHz) (FCC File Number SES-LFS-20040831-01253) found acceptable for filing).

which are networks of technically identical small antennas that generally communicate with a larger hub station and operate in the 12/14 GHz frequency bands." You aver that because the proposed earth stations are technically identical, "many of the processing activities required to issue a new system license . . . are simply not required[.]" You assert that the Commission has accepted application fees for VSAT networks in similar contexts.[2] You maintain that grant of the application would enable EchoStar to provide new MVPD services and "compete more effectively with cable incumbents[.]" You also claim that a grant would enable EchoStar to "bring[] new DTH services to U.S. consumers from the Canadian orbit location[.]" You assert that to require EchoStar to pay a $340.00 fee for each of its one million earth stations "merely because it is using non-U.S. satellites when an operator providing an identical service using U.S. satellites would not need to apply for licenses for each of its consumer dishes" would constitute "overtly discriminatory treatment relative to other DBS [direct broadcast satellite] and DTH providers serving the United States."

The Commission has discretion to waive filing fees "in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. § 158(d)(2). We construe this waiver authority narrowly, and limit its application to only those situations where the applicant has made the requisite showing of good cause and demonstrated that the action would promote the public interest.

The Commission previously has noted the special circumstances among earth station licenses to receive satellite transmissions, including the processing extended to large numbers of "technically identical small antenna earth station facilities."[3] Based on the circumstances of this application, we find that EchoStar's plan comports with the Commission's expressed intent in the *DISCO II* decision.[4] As in that situation,

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[2] In support, you cite *Digital Broadband Application Corp.*, 18 FCC Rcd 9455 (2003) and *Application of DIRECTV Enterprises, LLC*, 9 FCC Rcd 15529 (International Bur. 2004) (granting DIRECTV's application to use one million receive-only earth stations to provide direct broadcast satellite service in the U.S. using the Canadian-authorized DIRECTV satellite (File No. SES-LFS-20040112-00023) (*DIRECTV Application*)). *See also* Letter from Mark A. Reger, Chief Financial Officer (CFO), Office of Managing Director (OMD), FCC to Gary M. Epstein, Esq., et al. (dated June 15, 2004) (finding that "the public interest is served in permitting . . . [the] blanket [*DIRECTV Application*] and waiving the fees that would have been required to accompany one million separate license requests [i.e., $325,000,000.00]" and accepting the fee submitted by DIRECTV with the application, i.e., $7,935.00, which was equivalent to the then-current VSAT application fee) (*DIRECTV Letter Decision*)).

[3] *See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order*, 2 FCC Rcd 947, ¶¶ 245-248 (1987).

[4] *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Report and Order*, 12 FCC Rcd 24094, ¶¶ 201-204 (1997) (*DISCO II*) (*e.g.*, "To

Commission staff will expend fewer resources and will be able to more efficiently process EchoStar's application because the multiple earth stations are technically identical. Consequently, we find that you have shown that the public interest is served in permitting a blanket application and waiving the fees that would have been required to accompany one million separate license requests.[5]

Your request is granted to the extent stated herein and the Commission accepts your check of $8,260.00. If you have any questions concerning this letter, please call the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark A. Reger
Chief Financial Officer

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impose the least burdensome requirements possible while fulfilling our regulatory responsibilities, we will permit applicants to request 'blanket' licenses for large numbers of technically identical receive-only antennas, such as home 'dishes.' Blanket applications may be filed by the space station operator, the service supplier, the equipment manufacturer, or the electronics retailer. Further in cases where we have previously granted a particular satellite access to the United States to provide DTH/DBS or other receive-only services, we will allow the earth station applicant to include an exhibit citing to the previous Commission grant of access for that satellite and stating that it intends to use the satellite to provide the same services as those previously authorized.").

[5] *See DIRECTV Letter;* Letter from Mark Reger, CFO, OMD, FCC, to Stephen R. Bell, Esq. and Jennifer D. McCarthy, Esq. (dated Sept. 13, 2001) (finding that the public interest is served in permitting OrionNet, Inc. a blanket application for 3,000 receive-only earth stations and waiving the application fees that would have been required to accompany 3,000 separate license requests and accepting the submitted application fee); *see also* Letter from Mark Reger, CFO, OMD, FCC, to Patricia J. Paoletta, Esq., Todd M. Stansbury, Esq., and Jennifer D. Hindin, Esq. (dated June 24, 2002) (finding that the public interest is served in waiving the fees for Digital Broadcasting Applications, Corp. that would have been required in connection with a consolidated application for authority to operate one million transmit and receive earth stations with FSS and DBS satellites for an integrated two-way broadband video data service, and finding that individual application fees for each component are appropriate, i.e., a fee amount equivalent to a VSAT initial application (per system), as well as fee amounts for a fixed satellite transmits/receive earth station application, and a lead application for a fixed satellite transmits/receive earth station. DBAC proposed to offer service using Ku-band capacity on an ALSAT FSS satellite and DBS capacity on Canadian licensed satellites).

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

00000R06-04-094

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September 1, 2004

RECEIVED

SEP - 1 2004

Federal Communications Commission
Office of Secretary

VIA HAND DELIVERY

Andrew S. Fishel
Managing Director
Office of the Managing Director
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Petition for Waiver and Deferral of Application Fees; File No. SES-LFS-20040831-01253

Dear Mr. Fishel:

Attached for your consideration is a copy of a Petition for Waiver and Deferral of Application Fees ("Petition") that was submitted electronically to the Commission yesterday by EchoStar Satellite L.L.C. ("EchoStar"). The Petition was filed in connection with EchoStar's application requesting authority to operate 1,000,000 receive-only earth stations in the United States to receive Direct-to-Home Fixed-Satellite Service programming from Ku-band capacity on the ANIK F3 satellite -- a Canadian-licensed satellite to be deployed at 118.7° W.L.[1]

For your convenience, enclosed is a copy of the Application to which this Petition is associated. Should you have any questions regarding this matter, please do not hesitate to contact me.

[1] *See EchoStar Blanket Earth Receive Only Earth Station Application -- 118.7W*, File No. SES-LFS-20040831-01253 (filed Aug. 31, 2004) ("Application").

Respectfully submitted,

Pantelis Michalopoulos (TOL)

Pantelis Michalopoulos
Counsel to EchoStar Satellite L.L.C.

Enclosures

cc: Marlene H. Dortch, Secretary, FCC

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
EchoStar Satellite L.L.C.	)
Petition for Waiver and Deferral of Application Fees Pursuant to Section 1.1117 of the Commission's Rules	)

To: Office of the Managing Director

PETITION FOR WAIVER AND DEFERRAL OF APPLICATION FEES

EchoStar Satellite L.L.C. ("EchoStar") respectfully requests that, pursuant to Sections 1.3 and 1.1117 of the Commission's Rules,[1] and the Communications Act of 1934, as amended (the "Act"),[2] the Commission waive and/or defer certain application fees associated with its concurrently filed application seeking authority to operate 1,000,000 receive-only earth stations in the United States to provide Direct-to-Home Fixed-Satellite Service ("DTH-FSS") programming from the Ku-band capacity on the ANIK F3 satellite -- a Canadian-licensed satellite to be deployed at the 118.7° W.L. orbital location.[3] The Commission's Rules and the Act specifically provide that such fees may be waived and/or deferred where good cause is

[1] 47 C.F.R. §§ 1.3 and 1.1117.

[2] 47 U.S.C. § 158(d)(2).

[3] *See EchoStar Blanket Receive Only Earth Station Application -- 118.7 W.L.*, File No. SES-LFS-2004_____-____ (filed Aug. __, 2004) ("Application"). For your convenience, enclosed is a copy of the Application materials to which this request for waiver is associated.

shown and the public interest would be served.[4] As demonstrated below, good cause exists for, and the public interest would be served by, waiver and/or deferral of fees in this case because the application fee would not be commensurate with the Commission's actual costs of processing EchoStar's Application and would represent a regulatory barrier to EchoStar's proposed provision of service. If the Commission determines that a fee is required, EchoStar requests that the Commission find that the VSAT application fee is appropriate.

I. BACKGROUND

EchoStar is requesting authorization for 1,000,000 receive-only earth station antennas in order to expand its provision of MVPD services to consumers in the United States. The Commission's Rules designate the following schedule of charges for applications for the types of services which could be applied to EchoStar's Application:

- Initial Application for a Fixed Satellite Very Small Aperture Terminal (VSAT) System = $8,260.00[5]
- Fixed Satellite Receive-Only Earth Stations = $340.00[6]

EchoStar's proposed system is most like a VSAT system, therefore, it should be subject to at most the $8,260.00 application fee for an initial application for a VSAT system.

EchoStar's proposed system architecture consists of 1,000,000 technically identical earth stations operating in the Ku-band. This architecture is consistent with the FCC's definition of VSAT networks which are networks of technically identical small antennas that

[4] 47 C.F.R. § 1.1117; 47 U.S.C. § 158(d)(2).

[5] 47 C.F.R. § 1.1107(6)(a).

[6] 47 C.F.R. § 1.1107(3)(a).

generally communicate with a larger hub station and operate in the 12/14 GHz frequency bands.[7] Because EchoStar believes that its system is most like a VSAT network, it has paid the $8,260.00 application fee. However, if the Commission determines that the $340.00 fee for receive-only earth stations applies to each of EchoStar's 1,000,000 consumer units, EchoStar seeks a waiver of that $340,000,000.00 application fee.

II. GOOD CAUSE EXISTS FOR, AND THE PUBLIC INTEREST WOULD BE SERVED BY, WAIVER AND DEFERRAL OF THE RECEIVE-ONLY EARTH STATION APPLICATION FEE

The Commission has the authority to waive application fees where -- such as here -- good cause is shown and the public interest would be served.[8] As demonstrated below, a fee of up to $340 million would be prohibitively expensive for EchoStar, would deny competitive service offerings to the public, and would not be commensurate with FCC processing resources.

A. FCC Application Fees are Intended to Recover the Costs of Standard Application Processing

The Commission's schedule of application fees is intended to reimburse the government for the work involved in providing certain regulatory services associated with processing applications. In setting the fees, the Commission has noted that "the charges represent a rough approximation of the Commission's actual cost of providing the regulatory actions listed" and that "the very core of this effort is to reimburse the government -- and the

[7] *See Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, Order, 11 FCC Rcd. 21581, 21592 (1996).

[8] *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

general public -- for the regulatory services provided to certain members of the public."[9] However, in certain instances, the Commission's schedule of filing fees may not reasonably approximate the costs involved in handling a particular application or may not otherwise serve the public interest. For this reason, the Commission's Rules and the Act allow for parties to seek a waiver of the application fees.[10]

EchoStar warrants a filing fee waiver and deferral because many of the processing activities required to issue a new system license -- the costs of which the application fees are designed to recover -- are simply not required in reviewing EchoStar's Application. For example, the Commission need not review 1,000,000 different technical parameters to grant EchoStar's Application. Rather, like a VSAT network, the Commission only needs to review one set of technical parameters for all of the technically identical earth stations.

In similar contexts, the Commission has accepted application fees for VSAT networks. *See, e.g., Application of DIRECTV Enterprises, LLC*, DA 04-2526 (rel. Aug. 13, 2004) (approving application in which applicant paid VSAT application fee for 1,000,000 receive-only terminals to be used for DBS service from a Canadian satellite); *see also In the Matter of Digital Broadband Application Corp.*, Order, 18 FCC Rcd. 9455 (2003) (approving application in which applicant paid VSAT and fixed satellite transmit/receive earth station application fees for one hub earth station to be used with one million two-way FSS and DBS service from Canadian satellites). Thus, the $8,260.00 application fee paid for this Application

[9] *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Report and Order, 2 FCC Rcd. 947, 948 (1987).

[10] *See supra* note 4.

regulatory barrier to entry for competitive services. For all of the aforementioned reasons, EchoStar respectfully requests that the Commission grant the requested fee waiver and deferral of fees in conjunction with its Application to provide DTH-FSS service.

Respectfully submitted,

/s/

Pantelis Michalopoulos
Philip L. Malet
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-3000

Counsel for EchoStar Satellite L.L.C.

Dated: August 31, 2004

cc: Andrew S. Fishel, Managing Director, Office of the Managing Director (via hand delivery)

Approved by OMB
3060–0678

Date & Time Filed: Aug 31 2004 9:44:37:443PM
File Number: SES–LFS–20040831–01253
Callsign/Satellite ID: E040344

APPLICATION FOR EARTH STATION AUTHORIZATIONS FCC 312 MAIN FORM FOR OFFICIAL USE ONLY	FCC Use Only

APPLICANT INFORMATION
Enter a description of this application to identify it on the main menu:
EchoStar Blanket Receive Only Earth Station Application — 118.7W

1–8. Legal Name of Applicant

Name:	EchoStar Satellite L.L.C.	**Phone Number:**	303-723-1000
DBA Name:		**Fax Number:**	303-723-1699
Street:	9601 South Meridian Blvd.	**E-Mail:**	
City:	Englewood	**State:**	CO
Country:	USA	**Zipcode:**	80112 –
Attention:	David K Moskowitz		

9–16. Name of Contact Representative (If other than applicant)

Name:	Pantelis Michalopoulos	**Phone Number:**	(202) 429–6494
Company:	Steptoe & Johnson LLP	**Fax Number:**	(202) 429–3902
Street:	1330 Connecticut Avenue, N.W.	**E–Mail:**	pmichalo@steptoe.com
City:	Washington	**State:**	DC
Country:	USA	**Zipcode:**	20036–1795
Contact Title:		**Relationship:**	Legal Counsel

CLASSIFICATION OF FILING

17. Choose the button next to the classification that applies to this filing for both questions a. and b. Choose only one for 17a and only one for 17b.

a.

● a1. Earth Station

(N/A) a2. Space Station

b.

○ b1. Application for License of New Station

○ b2. Application for Registration of New Domestic Receive–Only Station

(N/A) b3. Amendment to a Pending Application

(N/A) b4. Modification of License or Registration

(N/A) b5. Assignment of License or Registration

(N/A) b6. Transfer of Control of License or Registration

(N/A) b7. Notification of Minor Modification

(N/A) b8. Application for License of New Receive–Only Station Using Non–U.S. Licensed Satellite

(N/A) b9. Letter of Intent to Use Non–U.S. Licensed Satellite to Provide Service in the United States

○ b10. Other (Please specify)

● b11. Application for Earth Station to Access a Non–U.S.satellite Not Currently Authorized to Provide the Proposed Service in the Proposed Frequencies in the United States.

17c. Is a fee submitted with this application?

(●) If Yes, complete and attach FCC Form 159. If No, indicate reason for fee exemption (see 47 C.F.R.Section 1.1114).

( ) Governmental Entity ( ) Noncommercial educational licensee

( ) Other(please explain):

17d.

Fee Classification BGV – Fixed Satellite VSAT System

18. If this filing is in reference to an existing station, enter:	19. If this filing is an amendment to a pending application enter:	
(a) Call sign of station:	(a) Date pending application was filed:	(b) File number of pending application:
Not Applicable	Not Applicable	Not Applicable

TYPE OF SERVICE

20. NATURE OF SERVICE: This filing is for an authorization to provide or use the following type(s) of service(s): Select all that apply:

- [X] a. Fixed Satellite
- [ ] b. Mobile Satellite
- [ ] c. Radiodetermination Satellite
- [ ] d. Earth Exploration Satellite
- [X] e. Direct to Home Fixed Satellite
- [ ] f. Digital Audio Radio Service
- [ ] g. Other (please specify)

21. STATUS: Choose the button next to the applicable status. Choose only one.

○ Common Carrier ◉ Non–Common Carrier

22. If earth station applicant, check all that apply.

☐ Using U.S. licensed satellites

☒ Using Non–U.S. licensed satellites

23. If applicant is providng INTERNATIONAL COMMON CARRIER service, see instructions regarding Sec. 214 filings. Choose one. Are these facilities:

○ Connected to a Public Switched Network ○ Not connected to a Public Switched Network ◉ N/A

24. FREQUENCY BAND(S): Place an "X" in the box(es) next to all applicable frequency band(s).

☐ a. C–Band (4/6 GHz) ☒ b. Ku–Band (12/14 GHz)

☐ c.Other (Please specify upper and lower frequencies in MHz.)

Frequency Lower: Frequency Upper:

TYPE OF STATION

25. CLASS OF STATION: Choose the button next to the class of station that applies. Choose only one.

○ a. Fixed Earth Station

○ b. Temporary–Fixed Earth Station

○ c. 12/14 GHz VSAT Network

○ d. Mobile Earth Station

(N/A) e. Geostationary Space Station

(N/A) f. Non–Geostationary Space Station

◉ g. Other (please specify)Receive–Only Blanket Earth Station App.

26. TYPE OF EARTH STATION FACILITY: Choose only one.

○ Transmit/Receive ○ Transmit–Only ◉ Receive–Only ○ N/A

PURPOSE OF MODIFICATION

27. The purpose of this proposed modification is to: (Place an 'X' in the box(es) next to all that apply.)

Not Applicable

ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.1307? If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. §§ 1.1308 and 1.1311, as an exhibit to this application. A Radiation Hazard Study must accompany all applications for new transmitting facilities, major modifications, or major amendments.

○ Yes ◉ No

Waiver of App. Fees

ALIEN OWNERSHIP Earth station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services are not required to respond to Items 30–34.

29. Is the applicant a foreign government or the representative of any foreign government?

○ Yes ◉ No ○ N/A

30. Is the applicant an alien or the representative of an alien?

○ Yes ○ No ◉ N/A

31. Is the applicant a corporation organized under the laws of any foreign government?	○ Yes ○ No ◉ N/A
32. Is the applicant a corporation of which more than one–fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	○ Yes ○ No ◉ N/A
33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which more than one–fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	○ Yes ○ No ◉ N/A
34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit an identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.	Technical Annex

BASIC QUALIFICATIONS

35. Does the Applicant request any waivers or exemptions from any of the Commission's Rules? If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.	◉ Yes ○ No Response to Q.35

36. Has the applicant or any party to this application or amendment had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explination of circumstances.	● Yes ○ No Response to Q. 36
37. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explination of circumstances.	○ Yes ● No Redacted Svc. Agree.
38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attemptiing unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition?If Yes, attach as an exhibit, an explanation of circumstances	○ Yes ● No 03.25.04 Letter
39. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items? If yes, attach as an exhinit, an explanation of the circumstances.	○ Yes ● No 05.05.04 Letter

40. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, address, and citizenship of those stockholders owning a record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.	Response to Q.40
41. By checking Yes, the undersigned certifies, that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.	◉ Yes ○ No
42a. Does the applicant intend to use a non-U.S. licensed satellite to provide service in the United States? If Yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. 25.137, as appropriate. If No, proceed to question 43.	◉ Yes ○ No
42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station?Canada	

43. Description. (Summarize the nature of the application and the services to be provided). (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

The purpose of this application is to obtain a blanket license for 1,000,000 receive-only earth stations to access the ANIK F3 satellite, which will provide DTH-FSS service from the Canadian orbital position at 118.7W. See attached Narrative.

Narrative

CERTIFICATION

The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

44. Applicant is a (an): (Choose the button next to applicable response.)

- ○ Individual
- ○ Unincorporated Association
- ○ Partnership
- ◉ Corporation
- ○ Governmental Entity
- ○ Other (please specify)

45. Name of Person Signing	46. Title of Person Signing
David K. Moskowitz	Exec. Vice President & Gen. Counsel

47. Please supply any need attachments.

Attachment 1:	Attachment 2:	Attachment 3:

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT
(U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION
(U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

SATELLITE EARTH STATION AUTHORIZATIONS
FCC Form 312 – Schedule B:(Technical and Operational Description)
FOR OFFICIAL USE ONLY

Location of Earth Station Site

E1: Site Identifier:	N/A – multiple	E5. Call Sign:	
E2: Contact Name	David K. Moskowitz	E6. Phone Number:	(303) 723–1000
E3. Street:		E7. City:	
		E8. County:	
E4. State		E9. Zip Code	
E10. Area of Operation:		CONUS, Alaska and Hawaii	
E11. Latitude:	0 °0 '0.0 "		
E12. Longitude:	0 °0 '0.0 "		
E13. Lat/Lon Coordinates are:		○ NAD–27 ○ NAD–83 ◉ N/A	
E14. Site Elevation (AMSL):		0.0 meters	

E15. If the proposed antenna(s) operate in the Fixed Satellite Service (FSS) with geostationary satellites, do(es) the proposed antenna(s) comply with the antenna gain patterns specified in Section 25.209(a) and (b) as demonstrated by the manufacturer's qualification measurement? If NO, provide as a technical analysis showing compliance with two-degree spacing policy.	○ Yes ○ No ◉ N/A
E16. If the proposed antenna(s) do not operate in the Fixed Satellite Service (FSS), or if they operate in the Fixed Satellite Service (FSS) with non-geostationary satellites, do(es) the proposed antenna(s) comply with the antenna gain patterns specified in Section 25.209(a2) and (b) as demonstrated by the manufacturer's qualification measurements?	○ Yes ○ No ◉ N/A
E17. Is the facility operated by remote control? If YES, provide the location and telephone number of the control point.	○ Yes ◉ No

E18. Is frequency coordination required? If YES, attach a frequency coordination report as	○ Yes ◉ No
E19. Is coordination with another country required? If YES, attach the name of the country(ies) and plot of coordination contours as	○ Yes ◉ No
E20. FAA Notification – (See 47 CFR Part 17 and 47 CFR part 25.113(c)) Where FAA notification is required, have you attached a copy of a completed FCC Form 854 and or the FAA's study regarding the potential hazard of the structure to aviation? FAILURE TO COMPLY WITH 47 CFR PARTS 17 AND 25 WILL RESULT IN THE RETURN OF THIS APPLICATION.	○ Yes ◉ No

POINTS OF COMMUNICATION

Satellite Name: OTHER	If you selected OTHER, please enter the following:

E21. Common Name: ANIK F3	E22. ITU Name:
E23. Orbit Location: 118.7W	E24. Country: Canada

POINTS OF COMMUNICATION (Destination Points)

E25. Site Identifier: N/A – multiple	
E26. Common Name:	E27. Country:USA

ANTENNA

Site ID	E28. Antenna Id	E29. Quantity	E30. Manufacturer	E31. Model	E32. Antenna Size<meters>	E41/42. Antenna GainTransmint and/or Recieve (___dBi at ____GHz)
N/A – multiple	N/A	1000000	Various	Various	0.66	36.2 dBi at 11.7

E28. Antenna Id	E33/34. Diameter Minor/Major (meters)	E35. Above Ground Level (meters)	E36. Above Sea Level (meters)	E37. Building Height Above Ground Level (meters)	E38. Total Input Power at antenna flange (Watts)	E39. Maximum Antenna Height Above Rooftop (meters)	E40. Total EIRP for al carriers (dBW)
N/A	0.901/0.546	0.0	0.0	0.0	0.0	0.0	0.0

FREQUENCY

E28. Antenna Id	E43/44. Frequency Bands (MHz)	E45. T/R Mode	E46. Antenna Polarization(H,V, L,R)	E47. Emission Designator	E48. Maximum EIRP per Carrier (dBW)	E49. Maximum ERIP Density per Carrier (dBW/4kHz)
N/A	11700 12200	R	Left and Right Circular	24M0G7W	0.0	0.0

E50. Modulation and Services (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

See Exhibit _

FREQUENCY COORDINATION

E28. Antenna Id	E51. Satellite Orbit Type	E52/53. Frequency Limits(MHz)	E54/55. Range of Satellite Arc E/W Limit	E56. Earth Station Azimuth Angle Eastern Limit	E57. Antenna Elevation Angle Eastern Limit	E58. Earth Station Azimuth Angle Western Limit	E59. Antenna Elevation Angle Western Limit	E60. Maximum EIRP Density toward the Horizon (dBW/4kHz)
			/					

REMOTE CONTROL POINT LOCATION

E61. Call Sign NOTE: Please enter the callsign of the controlling station, not the callsign for which this application is being filed.		E65. Phone Number	
E62. Street Address			
E63. City	E67. County	E64/68. State/Country /	E66. Zip Code

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NARRATIVE

By this Application, EchoStar Satellite L.L.C. ("EchoStar") seeks authority to operate 1,000,000 receive-only earth stations in the United States to receive Direct-to-Home Fixed-Satellite Service ("DTH-FSS") programming from Ku-band capacity on the ANIK F3 satellite -- a Canadian-licensed satellite to be deployed at the 118.7° W.L. orbital location. For the reasons set forth herein, grant of this Application would strongly serve the public interest.

I. INTRODUCTION

EchoStar is a leading provider of Direct Broadcast Satellite ("DBS") services in the multichannel video programming distribution ("MVPD") market and now has over 10 million subscribers. EchoStar and its affiliates own and operate eight DBS satellites at the 61.5° W.L., 110° W.L., 119° W.L., 148° W.L. and 157° W.L. orbital locations, as well as a hybrid Ka-/Ku-band FSS satellite at the 121° W.L. orbital location and FSS satellite capacity leased from SES AMERICOM at 105° W.L. EchoStar seeks to augment the spectrum it currently has available to provide MVPD services, including expanded local-into-local, international, high definition television ("HDTV") and other programming, by accessing additional Ku-band satellite capacity on the ANIK F3 satellite to be operated by Telesat Canada ("Telesat") at 118.7° W.L. EchoStar has entered into an agreement with Telesat to use Ku-band capacity on the ANIK F3 satellite as soon as it becomes operational.

As the Commission is well aware, EchoStar and other DBS providers continue to struggle with a bandwidth deficit that prevents them from providing local television in all areas of the country and sufficient HDTV and other programming. As a result, they cannot compete on a level playing field with entrenched cable incumbents. DBS providers are pursuing a number of potential alternatives to help combat this spectrum handicap, including reduced orbital

spacing between Broadcast Satellite Service ("BSS") locations,[1] service to the United States from non-U.S. BSS slots,[2] and using non-U.S. FSS satellites to provide DTH services.[3] This Application similarly requests authority for EchoStar to access Telesat's ANIK F3 satellite to serve the U.S. market and enhance EchoStar's MVPD service offering. This Application is no different than DIRECTV's application for use of the 72.5° W.L. Canadian BSS slot, except of course that DIRECTV is a larger MVPD provider than EchoStar. EchoStar's need for additional bandwidth in its effort to compete with cable operators is at least as dire as that of DIRECTV. Thus, application of the same standards that the Commission utilized in *DIRECTV* compels grant of EchoStar's request on an expedited basis

Moreover, EchoStar respectfully requests expedited grant of the Application. First, the contract between EchoStar and Telesat contemplates significant up front payments

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[1] *See In the Matter of SES AMERICOM, Inc. Petition for Declaratory Ruling to Serve the U.S. Market Using BSS Spectrum from the 105.5° W.L. Orbital Location, Petition for Declaratory Ruling*, File No. SAT-PDR-20020425-00071 (Apr. 25, 2002); Public Notice, Report No. SAT-00010 (rel. May 17, 2002); *see also In the Matter of the Petition of DIRECTV Enterprises, LLC For a Rulemaking on the Feasibility of Reduced Orbital Spacing in the U.S. Direct Broadcast Satellite Service*, Petition for Rulemaking (filed Sept. 5, 2003); Public Notice, Report No. SPB-196 (rel. Dec. 16, 2003).

[2] *See, e.g., In the Matters of Application of DIRECTV Enterprises, LLC Request for Special Temporary Authority for the DIRECTV 5 Satellite; Application of DIRECTV Enterprises, LLC; Request for Blanket Authorization for 1,000,000 Receive Only Earth Stations to Provide Direct Broadcast Satellite Service in the U.S. Using the Canadian Authorized DIRECTV 5 Satellite at the 72.5° W.L. Broadcast Satellite Service Location*, Order and Authorization, DA 04-2526 (Sat. Div., Int'l. Bur. 2004) ("*DIRECTV STA Order*").

[3] The Commission has previously granted two applications to provide DTH-FSS service using Canadian satellites. *See Digital Broadband Applications Corp.*, Order, 18 FCC Rcd. 9455 (Int'l. Bur. 2003) ("*DBAC*"); *see also Pegasus Development Corp.*, Order, 19 FCC Rcd. 6080 (Int'l. Bur. 2004) ("*Pegasus*").

which will be at risk pending Commission approval of this Application.[4] If the Commission does not grant this request on an expedited basis, EchoStar will have to decide whether to continue to fund this project without all necessary regulatory approvals. Second, regulatory certainty is important because use of the ANIK F3 satellite requires a number of "long-lead" investments such as the construction of a large number of consumer dishes, which will have to be procured well in advance of the deployment of the satellite.

In addition, as DIRECTV has already gained access to additional full-CONUS DBS capacity and cable operators continue to deploy high-bandwidth digital systems, time is of the essence to EchoStar for competitive reasons. For that reason, EchoStar may also request temporary authority to use an interim satellite at 118.7 W.L. before the ANIK F3 satellite is ready for launch.

II. DISCUSSION

The provision of new DTH services using Ku-band capacity on Telesat's ANIK F3 satellite, particularly local-into-local programming, will enhance EchoStar's ability to compete in the highly competitive MVPD market and provide other important public benefits. Thus, like other recent requests to utilize Canadian satellites to provide MVPD services in the United States that have been previously granted by the Commission, there are compelling public interest reasons supporting grant of the instant earth station Application.

[4] EchoStar is submitting today to the Commission a copy of its agreement with Telesat Canada, as amended, accompanied by a request for confidential treatment of the unredacted version of this agreement. A redacted public version of this agreement is also being submitted with this Application.

A. Description of Application

This Application requests authority to operate 1,000,000 receive-only earth stations in the United States to receive DTH programming in conventional FSS spectrum from Ku-band capacity on the ANIK F3 satellite, a Canadian-licensed satellite to be deployed at the 118.7° W.L. orbit location. This Application is filed pursuant to the rules and procedures adopted in the Commission's *DISCO II* order, which, among other things, permits foreign-licensed satellites to obtain access to the U.S. market through the filing of an earth station application seeking to add the satellite as an authorized point of communication.[5]

B. Use of the 118.7° W.L. Orbital Location To Provide DTH-FSS Services to the United States

The 118.7° W.L. orbital location is assigned to Canada under the 1988 Trilateral Arrangement governing the use of GSO orbit locations and FSS spectrum by Canada, Mexico and the United States,[6] and has been used by Canada for many years to provide Ku-band FSS services.[7] In June 2001, Telesat was awarded an FSS satellite license by Industry Canada to operate a hybrid C/Ku/Ka-band FSS satellite at the 118.7° W.L. orbital location.[8] Pursuant to

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[5] *See* 47 C.F.R. § 25.137; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, IB Docket No. 96-111, 12 FCC Rcd. 24094 (1997) ("*DISCO II*").

[6] *See Trilateral Arrangement Regarding Use of the Geostationary Orbit Reached By Canada, Mexico, and The United States*, FCC Public Notice No. 4406 (rel. Sept. 2, 1988).

[7] *See, e.g., Telesat Canada, Request to Eliminate Conditions on ANIK E1 and E2's Inclusion on The Permitted Space Station List*, Order, 16 FCC Rcd. 15979 (Sat. and Rad. Div., Int'l Bur. 2001); *Telesat Canada, Request for Declaratory Ruling or Petition for Waiver on Earth Stations' Use of Anik E1 and Anik E2 Satellite Capacity to Provide Basic Telecommunications Service in the United States*, Order, 15 FCC Rcd. 3649, 3653, ¶ 13 (Int'l Bur. 1999).

[8] *See Information Bulletin, Industry Canada Awards Satellite License* (June 21, 2001) (http://www.ic.gc.ca/cmb/welcomeic.nsf/558d636590992942852564880052155b/85256a220056

that authorization, as amended, Telesat plans to deploy the ANIK F3 satellite at 118.7° W.L. by mid-2006.

EchoStar requests Commission authority to utilize Ku-band capacity on the ANIK F3 satellite to provide DTH-FSS services to the United States, including Alaska and Hawaii.[9] EchoStar will use the additional spectrum available at 118.7° W.L. to allow the provision of expanded local-into-local, HDTV, international and other programming to supplement the services provided today by EchoStar's DBS and FSS satellites.

C. Grant of this Earth Station Application Is Supported By Compelling Public Interest Considerations

Grant of this Application to permit EchoStar to provide DTH-FSS services in the United States using Ku-band capacity on the ANIK F3 satellite at 118.7° W.L. will further a number of compelling public interest objectives. First, a grant would afford EchoStar access to additional spectrum resources, enabling it to provide new MVPD services and compete more effectively with cable incumbents. Second, because EchoStar will use the additional spectrum primarily to provide more local-into-local, HDTV and other services, the Commission's core objectives of viewpoint diversity and localism will be advanced. Third, EchoStar's proposal will enhance spectrum efficiency by bringing new DTH services to U.S. consumers from a Canadian orbital location. Fourth, EchoStar's proposed DTH operations would not adversely affect competition in the United States. Fifth, the use of another satellite with excellent coverage of Alaska and Hawaii will enable EchoStar to better serve these two locations. Finally, grant of this

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c2a485256a7200513218!OpenDocument&Highlight=0,118.7, last visited Aug. 18, 2004); *see also* Letters from Industry Canada dated April 8, 2004 and December 23, 2003 (Attachment 1).

[9] EchoStar does not seek Commission authority to communicate with the C-band or Ka-band payloads on the ANIK F3 satellite.

Application would have no adverse interference impact on the operations of neighboring U.S. or foreign Ku-band satellites.

The Commission has relied on similar public interest considerations in granting other applications to utilize Canadian satellite capacity to provide MVPD service to the United States.[10] For example, in *DBAC*, the Commission found that authorizing a new entrant to provide DTH services using Canadian satellites would increase competition in the MVPD market.[11] More recently, in considering DIRECTV's request to provide DBS service from the Canadian BSS slot at 72.5° W.L., the Commission concluded that facilitating the provision of local-into-local service is a compelling public interest justification supporting grant of the application.[12] The public benefits that will accrue here are at least as great as those associated with the DBAC and DIRECTV applications.

1. Enhanced Competition in MVPD Services

EchoStar continues to labor under the significant handicap of limited DBS spectrum, which constrains EchoStar's ability to provide bandwidth intensive local-into-local and HDTV programming and other MVPD services. Grant of this blanket earth station Application to permit access to the ANIK F3 satellite to provide additional DTH service in the United States will help address this competitive disadvantage by making EchoStar more competitive with entrenched cable operators in the MVPD market.

[10] *See generally DBAC*, 18 FCC Rcd. at 9462-63; *see also Pegasus*, 19 FCC Rcd. at 6080, 6086-87; *DIRECTV STA Order* at ¶¶ 10, 12.

[11] *DBAC*, 18 FCC Rcd. at 9462-63, ¶ 16.

[12] *DIRECTV STA Order* at ¶ 12.

The DBS spectrum available to EchoStar provides it with significantly less bandwidth and programming capacity than is available to digital cable systems. This limited spectrum must be used to provide local and national programming, HDTV content and interactive services across the entire United States. This spectrum constraint is exacerbated by the need to provide local broadcast channels by satellite to as many cities as possible and by the must-carry rules. In contrast, most digital cable systems can devote a full 750 MHz or more in each market to provide local, national and HDTV programming, as well as interactive, broadband and data services.[13] In addition, by virtue of the Commission's *DIRECTV* decision, DIRECTV too has gained access to additional full-CONUS DBS spectrum, further compounding the competitive pressure on EchoStar. While the Ku-band capacity available on the ANIK F3 satellite at 118.7° W.L. will not be enough to cure EchoStar's spectrum handicap, the additional spectrum resources will help mitigate this competitive disadvantage, and allow it to compete more effectively against cable in those new markets that will obtain local programming for the first time.

2. Viewpoint Diversity and Localism

As noted above, EchoStar will use the additional spectrum available at 118.7° W.L., among other things, to provide local-into-local service to more communities in the United States. The Commission has "previously found that local broadcast station signals play a very

[13] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Tenth Annual Report, 19 FCC Rcd. 1606, 1625, at tbl.3 (2004).

important role in terms of viewpoint diversity and localism, two of our most important Communications Act goals and policies."[14] As the Commission explained:

> The Commission has long recognized the importance of local broadcast television and its contribution to the Commission's goal of fostering localism. To the extent that the transaction results in an increase in the amount of local-into-local service offered to subscribers, this should increase competition in MVPD markets and should benefit consumers through increased choice, lower prices, or both. In addition, we find that increasing the number of designated market areas ("DMAs") in which [] subscribers can receive local broadcast television stations furthers the Commission's goal of promoting localism.[15]

EchoStar's proposal to use Ku-band capacity on the Telesat ANIK F3 satellite will assist in providing local-into-local service to additional markets, which will further the core Commission goals of promoting viewpoint diversity and localism. Each new market to which EchoStar will provide local-into-local service by virtue of the ANIK F3 satellite will receive all of its broadcast stations on the same satellite dish.

3. The Provision of DTH Services from 118.7° W.L. Furthers Efficient Use of Spectrum and Orbital Resources

Grant of this Application also will allow EchoStar to offer DTH services to the United States from an orbital location that otherwise has been unavailable to serve the U.S. MVPD market. The 118.7° W.L. orbital location is assigned to Canada for C-band and Ku-band operations under the 1988 Trilateral Arrangement governing the use of GSO orbit locations and FSS spectrum. This location has not previously been used to provide DTH services in the United

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[14] *See General Motors Corporation and Hughes Electronics Corporation, Transferors and The News Corporation Limited, Transferee*, Memorandum Opinion and Order, 19 FCC Rcd. 473 (rel. Jan. 14, 2004) at ¶ 210 (citations omitted).

[15] *Subject to Conditions, Commission Approves Transaction Between General Motors Corporation, Hughes Electronics Corporation and The News Corporation Limited*, Public Notice, 18 FCC Rcd. 26512, 26525 (rel. Dec. 19, 2003).

States. As a result, EchoStar's proposal would bring substantial new satellite capacity to bear in providing DTH services to U.S. consumers, thereby enhancing the efficient use of finite spectrum and orbital resources. The satellite will also be located within the primary arc of EchoStar's other DBS and FSS satellites, allowing for one dish antenna to receive signals from multiple satellites located between 110° W.L. and 121° W.L.

4. Grant of the Application Will Have No Adverse Effect on Competition in the United States

In the *DBAC and DIRECTV proceedings*, the Commission considered whether competitive distortions might result from authorizing the applicants to provide the services proposed. The Commission has concluded that competitive distortions would be likely to result only under certain conditions: (i) through use of a Canadian satellite, the applicant would have access to cost savings, subsidies or quality-enhancing assets not available to other U.S. service providers; (ii) those cost savings, subsidies, or quality-enhancing assets would be sufficiently large to enable the applicant to offer prices and quality of services that would cause some or all of the incumbent U.S. DTH/DBS providers to exit the market; (iii) following exit of some or all of the domestic DTH/DBS providers, the applicant would be able to raise the price of service to U.S. customers; and (iv) entry barriers exist such that neither the incumbent U.S. DTH/DBS providers or new U.S. DTH/DBS providers could enter the market, thereby defeating the price increase.[16] The Commission has also noted that competitive distortions related to predatory pricing are rare, in part because of the high risk that they will be unsuccessful.[17]

[16] *DBAC*, 18 FCC Rcd. at 9462-63, ¶ 16.

[17] *Id.*

In the recent *DIRECTV* decision, the Commission concluded that, although grant of that application would provide DIRECTV with access to quality-enhancing assets (*i.e.*, satellite capacity from a foreign-licensed satellite for the provision of local-into-local services in 24 markets in which DIRECTV is not currently providing this service), there was nothing in the record to suggest that this would allow DIRECTV to carry out a predatory strategy. The competitive issues implicated by EchoStar's proposal are identical to those presented in the *DIRECTV* case -- an incumbent DBS/DTH provider seeking to utilize a satellite at a Canadian orbital location to provide new MVPD services, in order to facilitate new and enhanced services, such as local-into-local and HDTV programming -- and likewise there is nothing here to suggest that grant of EchoStar's request would facilitate a predatory strategy. Thus, there are no competition concerns that would preclude grant of the instant application. Indeed, the 72.5° W.L. DBS slot is if anything a more quality-enhancing asset than the 118.7° W.L. FSS slot, since FSS orbital locations can be spaced much closer to one another than DBS slots. In any event, as indicated herein, there are significant pro-competitive benefits to granting this Application.

5. Enhanced Service to Alaska and Hawaii

As reflected in the beam patterns of the ANIK F3 satellite, coverage to Alaska and Hawaii is excellent. With additional bandwidth to serve these two states, EchoStar will be able to offer enhanced programming there.

6. *Grant of the Application* Will Not Cause Harmful Interference to Other Satellites

Grant of this Application will not result in harmful interference to other U.S. or foreign Ku-band FSS satellite operations. The 118.7° W.L. orbit location has been assigned to Canada under the 1988 Trilateral Arrangement, and the neighboring Ku-band satellites are Mexico's SatMex-5 satellite at 116.8° W.L and the EchoStar IX satellite at 121° W.L. Telesat

has concluded a coordination agreement with Mexico regarding the operation of ANIK F3 at 118.7° W.L. and will operate the satellite in accordance with that coordination agreement. Although Telesat has not yet concluded a similar agreement with satellite operators licensed by the United States, as the operator of the EchoStar IX satellite, EchoStar is confident that the ANIK F3 satellite will be successfully coordinated.

Furthermore, as discussed in the attached Technical Appendix, operation of the ANIK F3 satellite will comply with the Commission's two-degree spacing regime and other applicable space station technical requirements.[18] As a result, Telesat's Ku-band DTH-FSS at 118.7° W.L. will have no adverse interference impact on other Ku-band satellite operations.

D. *DISCO II* Considerations

Because the ANIK F3 satellite will be operated by Telesat pursuant to a license from Industry Canada for the 118.7° W.L. orbital location, the Commission must evaluate this application under its *DISCO II* framework. The *DISCO II* analysis includes consideration of a number of factors, including the effect on competition in the United States, eligibility and operating requirements, spectrum availability, and national security, law enforcement, foreign policy and trade concerns.[19] As part of this analysis, the Commission examines the "effective competitive opportunities" afforded to U.S. satellite operators in the home market of the foreign satellite seeking U.S. market access.[20]

[18] *See* Technical Appendix. Although EchoStar requests a waiver of certain technical requirements to facilitate the provision of DTH-FSS service, the ANIK F3 satellite will cause no more interference to adjacent satellites than permitted by the Commission's 2°-spacing rules.

[19] *See DISCO II*, 12 FCC Rcd. at 24107-72.

[20] *Id.* at 24098 ("For satellites licensed by non-WTO Members and for all satellites providing Direct-to-Home (DTH), Direct Broadcasting Satellite (DBS), and Digital Audio Radio Services (DARS), we will examine whether U.S. satellites have effective competitive

In three prior proceedings, the Commission has concluded that the provision of MVPD service using Canadian satellites would serve the public interest, despite the lack of effective competitive opportunities afforded to U.S. DBS providers in Canada.[21] Most recently, in the *DIRECTV* decision, the Commission considered circumstances that are virtually identical to those presented by this Application (except that DIRECTV, of course, is an appreciably larger MVPD distributor than EchoStar). The Commission concluded that DIRECTV's provision of new local-into-local service provided a compelling public interest justification supporting grant of the application.[22] The public benefits of EchoStar's proposed use of the ANIK F3 satellite to provide DTH-FSS services in the United States are at least as compelling as those previously relied on by the Commission.

As described in Section II.C, *supra*, grant of this Application would: (i) afford EchoStar access to additional spectrum resources and enable it to compete more effectively with cable incumbents; (ii) advance the Commission's core objectives of viewpoint diversity and localism; (iii) facilitate the early introduction of DTH service to U.S. consumers from the 118.7° W.L. orbit location; (iv) enhance services from EchoStar to Alaska and Hawaii; (v) have no negative implications for competition in the U.S. MVPD market; and (v) have no adverse

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opportunities in the relevant foreign markets to determine whether allowing the foreign-licensed satellite to serve the United States would satisfy the competition component of the public interest analysis.").

[21] The Commission necessarily concluded that there was a "compelling reason" to permit access to the U.S. market in these cases. *See DBAC*, 18 FCC Rcd. at 9461-63; *Pegasus*, 19 FCC Rcd. at 6086; *see generally DIRECTV STA Order.*

[22] *DIRECTV STA Order* at ¶ 12. The Commission specifically concluded that while grant of DIRECTV's request would not provide the benefits associated with entry of a new competitor into the MVPD market, the benefits resulting from grant of DIRECTV's proposal are nonetheless compelling and warrant favorable action. *Id.* at ¶ 9.

interference impact on other Ku-band satellite operations.[23] Thus, there are compelling public interest reasons supporting grant of the Application. In addition, EchoStar has demonstrated compliance with the Commission's eligibility and operating requirements,[24] and there are no spectrum availability, national security, law enforcement, foreign policy or trade concerns that would warrant treating this application differently from those previously granted by the Commission.

Finally, EchoStar notes that, while the Commission's *DISCO II* procedures were initially intended to permit "in-orbit" foreign satellites to obtain access to the U.S. market,[25] this limitation has never been strictly applied[26] and has been effectively eliminated in the context of the Commission's new space station licensing regime through the application of milestone and performance bond requirements on foreign satellite operators (which are also applicable to U.S.

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[23] While EchoStar has suggested that the Commission should better define the "compelling reason" standard as part of a comprehensive rulemaking proceeding to address the provision of DBS service from more closely spaced BSS slots and foreign BSS assignments, EchoStar believes that the numerous substantial and undeniable public benefits associated with this Application would satisfy the standard, however further defined. In addition, EchoStar's main reason for requesting a rulemaking was to ensure evenhanded standards. Since the Commission elected to grant DIRECTV's application without a rulemaking, evenhandedness means a similar grant of EchoStar's request. *See, e.g.*, EchoStar Comments at 5 ("A rulemaking should accordingly be initiated to address the appropriate standards for DBS providers to access the U.S. market via non-U.S. DBS slots, as the record developed in such a proceeding would provide a more solid foundation for the implementation of meaningful, equitable standards than piecemeal adjudication of STA requests or earth station applications."); *see also* Reply Comments of EchoStar Satellite L.L.C., File No. SAT-STA-20040107-00002, at 5 ("...the Commission should initiate a rulemaking to establish a consistent and competitively-neutral standard for access to the United States from foreign-licensed DBS satellites.").

[24] *See* Technical Appendix.

[25] *See DISCO II*, 12 FCC Rcd. at 24096-97.

[26] *See, e.g., Loral SkyNet Do Brasil*, Order, DA 03-4095 (Sat. Div., Int'l. Bur. 2003); *New Skies Networks, Inc.*, Order, 18 FCC Rcd. 896 (Sat. Div., Int'l. Bur. 2003); *Empresa Brasileira De Telecomunicacoes*, S.A., Order, 16 FC Rcd. 655 (Sat. and Rad. Div., Int'l. Bur. 2001).

earth station applications seeking to access foreign satellites).[27] The implementation schedule for the ANIK F3 satellite also complies fully with the FCC's milestone requirements.

III. WAIVER REQUESTS

EchoStar also requests, pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, waivers of Section 25.133(a) of the Commission's Rules, 47 C.F.R. § 25.133(a), to the extent required to provide EchoStar more than 12 months to complete construction of and bring into regular operation the 1,000,000 receive-only earth stations. In addition, to the extent the Commission concludes that a performance bond may be required by Section 25.137(d)(4) of the Rules, 47 C.F.R. § 25.137(d)(4), EchoStar believes that the Commission should waive this requirement given the unique circumstances of this case. There is good cause for these requested waivers.

A. Completion of Construction Period

Pursuant to Section 25.133(a) of the Commission's Rules, "[c]onstruction of [a Part 25] earth station must be completed and the station must be brought into regular operation within 12 months from the date of the construction permit and/or license grant except as may be otherwise determined by the Commission for any particular application."[28] In this case, many of the dishes for which EchoStar requests authority may be in existence at the time of Commission grant of this Application, or may be installed within a year from grant. Many others, however,

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[27] *See Amendment of the Commission's Space Station Licensing Rules and Policies, Mitigation of Orbital Debris*, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54, 18 FCC Rcd. 10760, 10874-75 (2003) ("*Space Station Licensing Report and Order*"); *see also* 47 C.F.R. 25.137.

[28] *See* 47 C.F.R. § 25.133(a).

may need to be placed into service over a longer period of time, as EchoStar gains new subscribers or switches existing subscribers to new dishes. Given the substantial number of receive-only earth stations for which EchoStar is requesting authorization, and the fact the Telesat does not anticipate deploying the ANIK F3 satellite until mid-2006, good cause exists to grant a waiver of Section 25.133(a) of the Commission's Rules to permit EchoStar to deploy all of the requested receive-only earth stations over an extended period of time. Because these earth stations are receive-only consumer premises equipment, and but for operating with a foreign satellite would not require a Commission authorization with a completion requirement, EchoStar requests that the Commission impose no specific completion date for these receive-only terminals. In the alternative, if the Commission concludes that it may only grant an extension of time, EchoStar requests a completion of construction and operation date five years from the grant date of this Application.

B. Space Station Performance Bond

Earth station applicants seeking to operate with a foreign-licensed satellite must demonstrate, among other things, "the space station the applicant seeks to access has complied with all applicable Commission requirements for non-U.S. licensed systems to operate in the United States, including . . . [p]osting a bond of . . . $5 million for GSO-like satellites,

denominated in U.S. dollars, compliant with the terms of §25.165."[29] However, the FCC does not impose performance bond requirements on replacement satellites.[30]

The ANIK F3 satellite will replace a C/Ku-band satellite operated by Telesat at 118.7° W.L. pursuant to authority granted by Industry Canada. Telesat has operated several satellites at 118.7° W.L. over time, including the ANIK E1 and ANIK E2 satellites, that have been authorized by the Commission to provide service in the United States.[31] Telesat is presently operating the ANIK E2 satellite in inclined orbit at this location. Accordingly, the ANIK F3 satellite is properly considered a replacement satellite and, in accordance with its treatment of replacement satellites, the Commission should not impose a performance bond requirement in the context of granting this Application.

The inclusion of a Ka-band payload on the ANIK F3 satellite does not alter this analysis. Although the Commission has stated that it will impose a bond requirement where additional or extended bands are added to replacement satellites,[32] EchoStar is only asking for authority to communicate with the ANIK F3 satellite's Ku-band payload. Thus, neither the C-

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[29] *See* 47 C.F.R. § 25.137(d)(4). The Commission recently decided to reduce the maximum bond amount to $3 million for GSO-like satellites, but that decision is not yet in effect. *See* Amendment of the Commission's Space Station Licensing Rules and Policies, *First Order on Reconsideration and Fifth Report and Order*, FCC 04-147, IB Docket No. 02-34 (rel July 7, 2004) (*"Bond Reconsideration Order"*).

[30] *Bond Reconsideration Order*, at ¶ 55.

[31] Both the ANIK E1 and E2 satellites were placed on the U.S. Permitted Space Station List. *See Telesat Canada Request for Declaratory Ruling or Petition for Waiver on Earth Stations' Use of ANIK E1 and ANIK E2 Satellite Capacity to Provide Basic Telecommunications Service in the United States*, Order, DA 99-2752 (rel. Dec. 9, 1999); *Telesat Canada, Request to Eliminate Conditions On ANIK E1 and E2's Inclusion on The Permitted Space Station List*, Order, DA 01-2051 (rel. Aug. 31, 2001). The Permitted Space Station List entries reflect the previous locations of the satellites (ANIK E1 at 118.7° W.L. and ANIK E2 at 111.1° W.L.).

[32] *Bond Reconsideration Order*, at ¶¶ 57-59.

band nor Ka-band payloads is material to the performance bond analysis for this Application because the Commission is not being asked to reserve such spectrum for use by EchoStar.[33] EchoStar only seeks to communicate with ANIK F3 using conventional Ku-band spectrum that Telesat has been previously authorized to use for service to the United States, and therefore the posting of a performance bond would not be appropriate in this case.

To the extent the Commission concludes otherwise, EchoStar requests a waiver of this requirement. Under the 1988 Trilateral Arrangement, Canada has been assigned the 118.7° W.L. orbit location for Ku-band operations. Because Canada has been granted access to this location by an international agreement among the United States, Canada and Mexico, Telesat's future Ku-band operations at 118.7° W.L. do not implicate warehousing or speculation concerns.[34] Unlike the ordinary case where a reservation of spectrum for a foreign satellite could preclude use of the spectrum by another operator, the United States does not have access to the spectrum under the 1988 Trilateral Arrangement. Furthermore, Canadian satellite access to the U.S. market from that location has been granted by the Commission through numerous earth station authorizations and the entry of other Canadian satellites on the Permitted Space Station List. Thus, even if the Commission concludes that the performance bond requirement may be applicable, the Commission should refrain from imposing this requirement in the unique circumstances of this case (deployment of a Canadian-licensed Ku-band replacement satellite in

[33] *See id.*

[34] *Space Station Licensing Report and Order*, 18 FCC Rcd. at 10825 ("By requiring satellite licensees to make a financial commitment to construct and launch their satellites, we help deter speculative satellite applications, and help expedite provision of service to the public. Moreover, replacing our current financial qualification requirement with a bond requirement will result in the financial community determining whether the licensee is likely to construct and launch its satellite system. Thus, financial qualifications will become a market-driven rather than a regulatory determination.").

an orbit location assigned to Canada by international agreement) because its application would not further the underlying purposes of the rule. Similarly, a waiver in these circumstances would not undermine the policies that the rule otherwise serves.

Of course, to the extent that the Commission does not waive the space station performance bond requirement, a bond will be posted upon grant of this Application.

Attachment 1

Industry Canada Industrie Canada

300 Slater Street
Ottawa, ON K1A 0C8

Our File: 6215-5-13

APR - 8 2004

Mr. Ted H. Ignacy
Vice President, Finance & Treasurer
1601 Telesat Court
Gloucester, Ontario
K1B 5P4

Dear Mr. Ignacy:

I refer to your letter of March 25, 2004 providing the Department with Telesat's final Anik F3 design specifications for approval.

We have considered the final design specifications in view of Telesat's original design commitments and note the absence of the multimedia Ku band payload. We have also taken into consideration, however, the significant challenges experienced by the satellite industry over the past few years. As well, we recognize the availability, through this Anik F3 satellite, of high quality C and Ku band capacity for use in all areas of Canada, including the north, to serve Canadian needs. Accordingly, the Department has concluded that the modified satellite design is acceptable.

As well, further to your discussions with Chantal Beaumier, please note the change to licence condition 6 concerning the availability of Anik F3 capacity for Canadian use as set out in the attachment to this letter.

I look forward to the implementation of your service offerings in the coming years and the contributions your satellite will make toward connecting Canadians. In keeping with our commitment to open, fair and transparent

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licensing processes, this letter will be posted on the Department's Strategis website. If you have any questions, please contact Chantal Beaumier at (613) 998-3819.

Yours sincerely,

Jan Skora
Director General
Radiocommunications and Broadcasting
Regulatory Branch

Attachment

Attachment

Revised Condition 6 of Conditions of Approval in Principle for Telesat Canada (Telesat) to obtain a C/Ku Space Station Licence for the 118.7°W Orbital Position

(6) Capacity to Meet Needs of Users and Service Providers in Canada

Telesat shall operate the satellite as a Canadian telecommunications common carrier and shall offer its satellite capacity at the 118.7°W orbital position on a non-discriminatory, first-come, first-served basis.

Ku Band Capacity

Notwithstanding condition 6, Telesat shall offer, through a public "call for interest", its Ku band capacity at the 118.7°W orbital position on a nondiscriminatory, first-come, first-served basis only to satellite users and service providers in Canada until October 6, 2005. Subject to contractual commitments already made to such users and service providers, a maximum of four Ku transponders per user or service provider will be permitted until October 6, 2005. Users or service providers in Canada may commit to more Ku capacity prior to October 6, 2005, but capacity above four Ku transponders will be conditional upon sufficient Ku capacity remaining available after all initial user and service provider needs have been met. This remaining Ku capacity will be allocated on a first-come, first-served basis, with no restriction or limit on the number of transponders contracted by a single entity; and at the completion of this process, any remaining Ku capacity may be made available to other entities.

Call for Interest in C Band Capacity

Telesat shall initiate a public "call for interest" to determine Canadian needs for C band capacity prior to assigning such capacity to entities outside Canada. Should the C band capacity being made available by this licence exceed the identified Canadian requirements, Telesat may assign such excess capacity for service in other countries, subject to the approval of the appropriate regulatory authorities of the administration concerned.

Additional C Band Capacity for Users and Service Providers

If a satellite user or service provider in Canada demonstrates a need for C band satellite capacity, or if such a need for capacity should arise as a result of government initiatives to encourage the deployment of broadband connectivity to

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underserved communities by 2005, and Telesat is unable to accommodate those needs on the satellite capacity being made available by this licence Telesat shall, until October 6, 2005, use reasonable commercial efforts to find and offer sufficient C band capacity to support these needs. These efforts are limited to the amount of C band capacity equivalent to the amount not committed to Canadian users on the satellite by the licensee.

(6.4) Call for Interest

With respect to the "call for interest" noted in conditions 6.1 and 6.2, Telesat shall issue the "call for interest" by June 30, 2004, providing potential Anik F3 users information on the satellite design and parameters. Canadian satellite users will have until October 6, 2005 to commit to Anik F3 capacity. Telesat shall also demonstrate to the Department that they have made reasonable efforts to make capacity at the 118.7°W orbital position available to Canadian satellite users. To this end, Telesat shall provide the Department with its plan for the "call for interest" by May 3, 2004. Further, Telesat shall provide, upon request, information to the Department concerning the progress and results of the "call for interest".

Letter to Telesat Canada

300 Slater Street
Ottawa, ON K1A 0C8

Our File: 6215-5-13

Dec 23, 2003

Mr. Ted Ignacy
Vice President, Finance & Treasurer
Telesat Canada
1601 Telesat Court
Gloucester, Ontario
K1B 5P4

Dear Mr. Ignacy:

This is further to our letter of May 1, 2003 granting an additional extension to the implementation milestones of your approval in principle to develop and operate the Anik F3 space station at the 118.7W orbital position.

I note that our letter dealt with an extension to the milestones set out in condition 5 of the approval in principle. Through oversight, however, we did not deal with the consequential changes to affected conditions. Condition 6, *specifically conditions 6.1 and 6.3, concerning capacity to meet the needs of* users and service providers in Canada, also need to reflect the one year extension. Accordingly, attached is a revised condition 6 of licence for the approval which fully reflects the one year extension to the Anik F3 milestones.

In keeping with our commitment to fair, open and transparent licensing processes, a copy of the consolidated conditions incorporating all the changes to the conditions to date will be posted on our Strategis website. If you have any questions, please contact Chantal Beaumier at (613) 998-3819.

Yours sincerely,

Jan Skora
Director General
Radiocommunications and
Broadcasting Regulatory Branch

REVISED DECEMBER 23, 2003

Conditions of Approval in Principle for Telesat Canada (Telesat) to obtain a C/Ku Space Station Licence for the 118.7°W Orbital Position

(1) Eligibility

Telesat shall conform on an ongoing basis with the Canadian ownership and control requirements as set out for a radiocommunication carrier in section 10(2)(d) of the *Radiocommunication Regulations*.

(2) Licence Transferability

This licence may not be transferred or assigned without full review of the application by the Department and the authorization of the Minister. For clarification, and without limiting the generality of the foregoing, "transfer" includes any leasing, sub-leasing or other disposition of the rights and obligations of the licence, and also includes any change which would have a material effect on the ownership or control in fact of Telesat.

(3) Ka Band Payload

Telesat shall incorporate in its satellite, and operate, the Ka band payload as set out in its C and Ku band satellite application submitted to Industry Canada on March 15, 2001, or a Ka band payload otherwise acceptable to the Department. Operation of this Ka band payload will be permitted until such time as another Ka band satellite, to be operated by an entity authorized by Industry Canada, is ready to use the Ka band at the 118.7°W orbital position.

(4) Laws, Regulations, and Other Obligations

Telesat is subject to and must comply with the ITU *Radio Regulations*, the *Radiocommunication Act* and the *Radiocommunication Regulations*, and Canada's spectrum utilization policies pertaining to its licensed radio frequency bands.

(5) Implementation Milestones

Telesat shall meet all implementation milestones by the respective dates set out in the following table:

Table of Implementation Milestones

	Milestone	Date
1	Submission of final design specifications to Department for approval	April 7, 2004
2	Final signature of contracts for (1) the construction of the satellite and (2) the launch of the satellite into its authorized orbital position by Milestone 3	June 9, 2004
3	Placement of the satellite into its authorized orbital position	2006